

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HARRIET H. ROLAND, M.B.A, J.D., LTD., Case No. 2:15-CV-1133 JCM (VCF)

Plaintiff(s),

ORDER

V.

DARLENE HICKMAN, et al.,

Defendant(s).

Presently before the court are the report and recommendation of Magistrate Judge Ferenbach. (Doc. # 34). Defendant the United States Internal Revenue Service (“IRS”) filed objections to the report and recommendation (doc. # 35), and defendant Marvin Hickman filed a response. (Doc. # 36). Interpleader plaintiff Harriet H. Roland, M.B.A., J.D., Ltd. (“Roland”) filed a notice of non-opposition to the report and reccommendation. (Doc. # 37).

I. Background

18 While representing Darlene Hickman as her attorney, Ms. Roland held \$103,396.31 on
19 behalf of Mrs. Hickman pursuant to their engagement agreement. The engagement included, but
20 was not limited to, matters dealing with the IRS. At the time the interpleader in this action was
21 filed, Mrs. Hickman was involved in a divorce proceeding with defendant Marvin Hickman.

22 Before the divorce was finalized, Ms. Roland discovered that the IRS and defendant
23 Summerlin Hospital Medical Center (the “Hospital”) held competing liens against property owned
24 by Mrs. Hickman and her soon-to-be ex-husband. These liens frustrated Ms. Roland’s attempt to
25 determine to whom the funds belonged.

To resolve this question, Ms. Roland filed a complaint for interpleader against the Hickmans, the IRS, and the Hospital within the aforementioned divorce proceeding. One month later, the IRS removed just the interpleader action to federal court, with the divorce proceeding

1 remaining in state court. Six days after removal, the presiding state-court judge entered a divorce
 2 decree that equally divided the funds in Ms. Roland's possession between Mr. and Mrs. Hickman.

3 Mr. Hickman now moves to dismiss, arguing that the court lacks subject-matter jurisdiction
 4 under the prior exclusive jurisdiction doctrine and that the divorce decree mooted this controversy
 5 by awarding half of the funds to him.

6 **II. Legal Standard**

7 A party may file specific written objections to the findings and recommendations of a
 8 United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D.
 9 Nev. R. IB 3-2. Where a party timely objects to a magistrate judge's report and recommendation,
 10 the court is required to "make a *de novo* determination of those portions of the [report and
 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1).

11 The court "may accept, reject, or modify, in whole or in part, the findings or
 12 recommendations made by the magistrate." *Id.* Pursuant to Local Rule IB 3-2(a), a party may
 13 object to the report and recommendation of a magistrate judge within fourteen days from the date
 14 of service of the findings and recommendations. D. Nev. R. IB 3-2(a).

15 **III. Discussion**

16 Magistrate Judge Ferenbach recommends that Mr. Hickman's motion to dismiss for lack
 17 of subject matter jurisdiction be granted based on the prior exclusive jurisdiction doctrine. *See*
 18 *State Eng'r of State of Nevada v. S. Fork Bank of Te-Moak Tribe of W. Shoshone Indians of*
Nevada, 339 F.3d 804, 809 (9th Cir. 2003). Judge Ferenbach also recommends that the matter be
 19 remanded to the state court for further proceedings. Finally, the magistrate judge recommends that
 20 if the matter is remanded, the court order the clerk of court to transfer the funds in question,
 21 currently in the court's registry, to the Eighth Judicial District Court for further proceedings.

22 The IRS objects to the recommendations. It argues that the magistrate judge's application
 23 of the prior exclusive jurisdiction doctrine was in error because the two cases are not *in rem*
 24 proceedings concerning an identical *res*.¹ It argues that interpleader actions are generally

25
 26 ¹ The IRS also argues that the magistrate judge's factual finding that Ms. Roland holds the
 27 disputed funds in a client-trust account and that Ms. Roland represented Mrs. Hickman in her
 28 divorce proceedings is incorrect. Having reviewed the original interpleader complaint, the court
 finds that the IRS is correct. (*See* doc. # 1-2 at 4). Ms. Roland appears to have represented Mrs.
 Hickman in an IRS matter, and it is not clear whether the funds are held in a client-trust account
 or otherwise.

1 characterized as *in personam* proceedings and that even if the state divorce court proceeding was
 2 partially *in rem*, the state court did not have *in rem* jurisdiction over the interpleaded funds
 3 themselves. Finally, the IRS argues that even if the court has the discretion to remand, it should
 4 decline to exercise that discretion because resolution of the interpleader action turns on questions
 5 of federal law. It requests that the court should instead stay the action.

6 In his response to the IRS' objections, Mr. Hickman argues that the interpleader and
 7 divorce proceedings are either *in rem* or, alternatively, *quasi in rem*. Consistent with the magistrate
 8 judge's findings, Mr. Hickman maintains that both *in rem* and *quasi in rem* proceedings are subject
 9 to the prior exclusive jurisdiction doctrine. He also asserts that the mere existence of a federal tax
 10 lien does not create a cause of action to raise federal question jurisdiction, arguing that the IRS has
 11 not presented any counterclaims or otherwise pled a claim in the matter. Hickman argues that the
 12 IRS' request to stay the action so that a federal court can resolve its claims is thus meritless.

13 The magistrate judge's order contains a lengthy discussion of the application of the prior
 14 exclusive jurisdiction doctrine. (*See generally* doc. # 34). The court was correct in its finding that
 15 the prior exclusive jurisdiction doctrine applies to actions that are both *in rem* and *quasi in rem*.
 16 *See State Eng'r of State of Nevada v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of*
Nevada, 339 F.3d 804, 811 (9th Cir. 2003) (citing *United States v. Bank of N.Y. & Trust Co.*, 296
 17 U.S. 463, 477 (1936); 14 Federal Practice and Procedure § 3631, at 8–11); (Doc. # 34 at 2).

18 The magistrate judge concluded that the doctrine applies here because both the divorce
 19 proceeding in the state court and the interpleader removed to this court “are *in rem* or *quasi in rem*
 20 proceedings.” (Doc. # 34 at 3). He did not specifically find whether either proceeding was *in rem*
 21 or *quasi in rem*.² (*Id.*) The IRS attempts to sidestep the jurisdictional issue by arguing that
 22 interpleader actions are *in personam* proceedings. It argues that some aspects of divorce
 23 proceedings require *in rem* jurisdiction, while others require *in personam* jurisdiction.

24 The Ninth Circuit addressed a similar argument in *State Eng'r of State of Nevada*:

25 [t]he tribe and the federal government try to escape this inexorable jurisdictional
 26 bar by emphasizing that contempt actions are *in personam* rather than *in rem*. But
Alpine, like this case, was not styled as an *in rem* action, yet the formalistic
 27 distinction made not the least bit difference. Lest we “exalt form over necessity,”
Montgomery Ward & Co. v. FTC, 691 F.2d 1322, 1328 (9th Cir.1982), we look
 behind “the form of the action” to “the gravamen of a complaint and the nature of

28 ² To be sure, making such a finding was not necessary in this case because *in rem* and *quasi in rem* proceedings are both subject to the prior exclusive jurisdiction doctrine. *See State Eng'r of State of Nevada*, 339 F.3d at 811.

1 the right sued on," *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1520 (9th
 2 Cir.1985) (superseded by statute on other grounds as stated in *Northrop Corp. v.
 Triad Int'l Mktg. S.A.*, 842 F.2d 1154 (9th Cir.1988) (*per curiam*)).

3 *State Eng'r of State of Nevada*, 339 F.3d at 810-11.

4 Looking "behind the form of the action" to "the gravamen of [the interpleader]," the court
 5 finds that jurisdiction over the funds in Ms. Roland's possession is *quasi in rem* in nature in both
 6 the divorce proceeding and the interpleader action. Regardless of whether the typical nature of
 7 interpleader actions is *in personam*, *in rem*, or *quasi in rem*, the Supreme Court has observed that
 8 *quasi in rem*³ actions result in a judgment for which the effect is "limited to the property that
 9 supports jurisdiction and does not impose a personal liability on the property owner." *Shaffer v.
 Heitner*, 433 U.S. 186, 199 (1977).

10 This interpleader action, despite the IRS' arguments to the contrary, does not require the
 11 court to adjudicate any actual claims or causes of action.⁴ Ms. Roland's interpleader asks only that
 12 the court to resolve the priority of a number of claims over a certain sum of cash she was entrusted
 13 with. The fact that federal tax lien law is implicated does not change the nature of the interpleader.
 14 Resolution of this matter will not "impose a personal liability on the property owner" and is
 15 "limited to the property that supports jurisdiction." *Id.*

16 The IRS has already imposed personal liability on the Hickmans. It now seeks only to
 17 satisfy that liability with the funds subject to interpleader, which does not require the imposition
 18 of liability, but instead requires the resolution of the priority of liens under state law. *See United
 States v. Bess*, 357 U.S. 51, 55 (1958). A judgment in this action would impose no personal
 19 liability. It therefore requires a court to exercise *quasi in rem* jurisdiction and not *in personam*
 20 jurisdiction over the funds. *See supra* n. 3.

21 ...

22 ³ "A judgment in rem affects the interests of all persons in designated property. A judgment
 23 *quasi in rem* affects the interests of particular persons in designated property. . . ." *Shaffer v.
 24 Heitner*, 433 U.S. 186, 228 n. 17 (1977) (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n. 12
 (1958)).

25 ⁴ The IRS argues that the case turns on questions of federal law that should be adjudicated
 26 in a federal forum. In attempting to make that very argument, it points out, correctly, that a tax lien
 27 "merely attaches consequences, federally defined, to rights created under state law." (Doc. # 35 at
 28 14) (quoting *United States v. Bess*, 357 U.S. 51, 55 (1958)). In order to resolve its rights to the
 funds, the court must merely apply state law to federally defined rights and need not resolve any
 federal law. The "mere presence of a federal issue in a state cause of action does not automatically
 confer federal-question jurisdiction." *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S.
 804, 813 (1986).

1 As the *State Eng'r of State of Nevada* court found:

2 [t]o be sure, the [interpleader] action does not “determine interests in specific
 3 property as against the whole world” and is brought only “against the defendant[s]
 4 personally,” *Black's Law Dictionary* 1245 (6th ed. 1990). But “it is the [parties’]
 5 interest[s] in the property that serve[] as the basis of the jurisdiction.” *Id.* Therefore,
 6 the action is *quasi in rem*, *id.*, and the doctrine of prior exclusive jurisdiction fully
 7 applies[.]

8 *State Eng'r of State of Nevada*, 339 F.3d at 811 (citing *United States v. Bank of N.Y. & Trust Co.*,
 9 296 U.S. 463, 477 (1936); 14 *Federal Practice and Procedure* § 3631, at 8–11).

10 Second, the court finds that the magistrate judge’s conclusion that both the divorce action
 11 and the interpleader exercise jurisdiction over the same *res* was correct. *Id.* Ms. Roland initiated
 12 the interpleader within the divorce proceeding. The IRS then removed just the interpleader action
 13 to federal court, meaning that the state court retained jurisdiction over the rest of the divorce
 14 proceeding, including the marital estate, which includes funds pledged to Ms. Roland to be held
 15 on behalf of Mrs. Hickman.

16 The fact that the divorce court simultaneously exercises jurisdiction over a separate *res*—
 17 the Hickman’s marital status—does not strip it of its jurisdiction over the marital estate. In fact,
 18 six days after the IRS removed the interpleader from the divorce proceeding, the state court
 19 demonstrated its jurisdiction over the *res* at issue by entering a divorce decree that divided the
 20 funds equally between Mr. and Mrs. Hickman. Any judgment this court enters would disturb the
 21 divorce decree.

22 “Because this is not a case where the court hearing the second suit can adjudicate personal
 23 claims to property without disturbing the first court’s jurisdiction over the *res*, see *Kline*, 260 U.S.
 24 at 230, 43 S.Ct. 79, the [interpleader] proceeding cannot be termed “*strictly in personam*.” *State*
 25 *Eng'r of State of Nevada*, 339 F.3d at 811 (quoting *Penn. Gen. Cas. Co. v. Pennsylvania ex rel.*
 26 *Schnader*, 294 U.S. 189, 195 (1935)).

27 Consistent with *State Eng'r of State of Nevada*, the court finds that the interpleader and
 28 divorce proceedings are *quasi in rem*. The magistrate judge’s finding that the proceedings were *in*
rem or *quasi in rem* was thus correct. Accordingly, he was also correct that the prior exclusive
 jurisdiction doctrine applies. *See id.* As explained above, the IRS’ argument that the interpleader
 action requires resolution of unidentified federal claims is unavailing. Having conducted a *de novo*

1 review of the magistrate judge's report and recommendation, the court will adopt his report and
2 recommendation.⁵

3 **IV. Conclusion**

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
6 recommendation of Magistrate Judge Ferenbach (doc. # 34) are ADOPTED, consistent with the
foregoing.

7 IT IS FURTHER ORDERED that defendant Marvin Hickman's motion to dismiss for lack
8 of subject matter jurisdiction (doc. # 15) be, and the same hereby is, GRANTED.

9 IT IS FURTHER ORDERED that Harriet H. Roland, M.B.A., J.D., Ltd.'s interpleader
10 action (doc. # 1-2) be, and the same hereby is, REMANDED to state court for further proceedings.

11 IT IS FURTHER ORDERED that the clerk of court shall transfer the funds in the court's
12 registry (*see* doc. # 32) to the Eighth Judicial District Court, Department E, for further proceedings
13 in the matter of *Harriet H. Roland, M.B.A., J.D., Ltd. v. Darlene Hickman, et al.*, D-14-490939-d.

14 DATED March 28, 2016.

15 
16 UNITED STATES DISTRICT JUDGE

27 _____
28 1. ⁵ The court does not adopt the factual findings discussed *supra* in footnote 1. *See supra* n.